IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7334 of 2004
Date of decision:21.11.2006

Kulwant Singh

....Petitioner

versus

State of Punjab and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate, for the petitioner.
Mr. Amol Rattan Singh, Addl.A.G.Pb.
Mr. Hemant Saini, Advocate, for respondent Nos. 3 to 9.
Mr. VK Kaushal, Advocate for respondent Nos. 10 and 14.
Mr. Amandeep Singh, Advocate for respondent No.24.

JUDGMENT:

This writ petition seeks quashing of selection and appointment of respondent Nos. 3 to 30 to the posts of Class IV in the Directorate of Animal Husbandry, in pursuance of advertisement dated 17.10.2000. A direction is also sought to consider and appoint the petitioner as Class IV employee as he was more meritorious and having more percentage of permanent disability than the selected candidates and also because the petitioner belongs to Scheduled Caste category.

Case set out in the writ petition is that the petitioner is 70% physically handicapped person belonging to Scheduled Caste category and having passed matriculation examination with 287 marks out of 650 marks and thus, he was eligible for Class IV post. On 17.10.2000, advertisement, Annexure P.5 was published notifying 42 vacancies of Class IV posts – 24 for blind, 12 for deaf and dumb and 6 for other handicapped persons. The petitioner applied with relevant certificates and appeared for interview on 16.3.2001 alongwith respondent Nos. 3 to 30. However, the petitioner was not selected while respondent Nos. 3 to 30 who belonged to general category and had less merit and lessor percentage of disability, were

selected. The petitioner filed CWP No.10657 of 2001, wherein reply was filed and list of selected candidates was supplied. The writ petition was withdrawn with liberty to file fresh petition after impleading the selected candidates.

In the reply filed, case on behalf of the State is that the petitioner having secured 11 marks while last candidate in the merit list had secured 16 marks, there was valid reason for which he was not selected. It is also stated that though, in the advertisement, categories of handicapped persons were further divided into blind/deaf and dumb and other handicapped persons, instead of appointing six other handicapped persons, 28 other handicapped persons were appointed, there being a policy laid down vide memo No.1/30/99/5 SS/2196 dated 1.6.2000 to the effect that nature of handicap cadre could be shifted as per requirement of job.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner submitted that advertisement was issued on 17.10.2000 while though policy relied upon was dated 1.6.2000 but the same was not mentioned in the advertisement and thus, shifting of category of handicapped person was not permissible and appointments beyond advertised vacancies in the cadre of other handicapped persons were illegal in view of law laid down by the Hon'ble Supreme Court in **Prem Singh v. HSEB,** 1996(3) SCT 563.

Learned counsel for the State submitted that the petitioner also belonged to other handicapped persons than blind and deaf and dumb and even in absence of clarification, there was no error in giving appointment to other categories of handicapped persons when blind and deaf and dumb persons were not found eligible and, thus, the appointments were not beyond the total notified vacancies. He also submitted that in an exceptional situation, appointments beyond notified vacancies were permissible as held by the Hon'ble Supreme Court in **Surinder Singh and others v. State of Punjab and another,** 1997(4) RSJ 57.

The question for consideration is whether selection of respondent Nos. 3 to 30 is liable to be quashed on the ground that their selection was beyond advertised posts or on the ground that the petitioner was not selected inspite of being Scheduled Caste and being more

handicapped.

Selection in the present case, though beyond advertised vacancies in the category of other handicapped persons was not beyond overall vacancies notified. In absence of any claim by blind and deaf and dumb category, the stand of the State that persons in the said categories were not available and in such a situation, instead of keeping the posts vacant, persons in other categories of handicapped were appointed, cannot be rejected at the instance of the petitioner who himself belongs to other category of handicapped persons. Thus, selections made are not liable to be set aside on the ground that the same were beyond advertised vacancies. Selections are also not liable to be set aside on the ground that the petitioner belongs to Scheduled Caste category or was more handicapped as none of the said posts belong to Scheduled Caste category. According to the stand of the State, posts were reserved for handicapped categories to fill up backlog of posts of handicapped category in the department. In the said reserved posts, there is no provision or any legal requirement of reservation being separately made for Scheduled Caste category nor out of eligible candidates, there is any criteria of selection being of the more handicapped persons.

For the above reasons, we do not find any merit in this petition and the same is dismissed.

(Adarsh Kumar Goel)
Judge

November 21, 2006 (Rajesh Bindal)
'gs' Judge